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In re Application of HANGARTNER et al :
U.S. Application No.: 10/550,668 :
PCT Application No.: PCT/US2003/009418 :
Int. Filing Date: 27 March 2003 :
Priority Date Claimed: none : DECISION
Attorney Docket No.: WRU 0239 PA :
For: OSTEOPOROSIS SCREENING USING :
RADIOGRAPHIC ABSORTIOMETRY OF :
THE MANDIBLE :

This is in response to applicant's "Request for Refund" filed 21 February 2007.

BACKGROUND

On 27 March 2003, applicant filed international application PCT/US2003/009418. The thirty-month period for paying the basic national fee in the United States expired on 27 September 2005.

On 26 September 2005, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 17 November 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 21 February 2007, applicant filed an executed declaration along with payment for a two month extension of time and the present request for refund.

DISCUSSION

37 CFR 1.26(a) states in relevant part,

The Commissioner may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent or trademark filing for which the fee was paid,

including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee.

The present petition states that because the Notification of Missing Requirements was never received by applicant, the fee for a two month extension of time for reply to the Notification of Missing Requirements should not be required.

According to the Official Gazette at 1156 OG 53 and MPEP 711.03(c), proof of failure to receive an Office communication must include: (1) a statement by the practitioner that the Office communication was not received by the practitioner, (2) a statement by the practitioner that he searched the application file jacket and docket records and that the search indicates that the Office communication was not received, and (3) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

With regard to item (1) above, applicant's representative has provided the required statement.

With regard to item (2) above, applicant's representative has not provided the required statement.

With regard to item (3) above, the supplied docket record is insufficient. Petitioner must submit a docket record which lists responses due to the USPTO on 17 January 2007 for all cases handled by the representative's firm. Such docket record must illustrate the absence of any listing of a response due to a Notification of Missing Requirements for the present application.

CONCLUSION

For the reasons above, the request for refund is DISMISSED without prejudice.

If reconsideration on the merits of the request is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Request for Refund".

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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